REMARKS

Claims 1-7 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Bealkowski et al. ('075). This rejection is respectfully traversed for the following reasons. As a preliminary matter, although the Examiner mentions claims 8-13 in the body of the rejection, it is noted that the Examiner has not formally rejected claims 8-13 in the statement of rejection. Accordingly, claim 1 has been amended to include the limitation of non-rejected claim 9 (which has been fully considered and examined by the Examiner), whereby the amendment does not raise any new issues that would require further consideration and/or search. If the Examiner maintains the pending rejections, it is respectfully submitted that the amendment be entered so as to reduce issues on appeal.

A.   CLAIM 1

In order to expedite prosecution, claim 1 has been amended to include the limitation of 9. Claim 1 as amended recites in pertinent part, "wherein said computer is configured so that firmware of one of said plurality of disk devices is updated to the firmware of another one of said plurality of disk devices." With respect to this feature, the Examiner alleges that Figure 1B and col. 3, lines 37-43 of Bealkowski et al. discloses "[f]irmware of one disk device (computer) can be updated to another of the disk devices (another computer)." However, col. 3, lines 37-43 is completely silent as to updating firmware of one of the alleged disk devices 102, 102B to another one of the disk devices. Instead, the firmware of all the alleged disk devices are updated using an *external* source code as admitted by the Examiner on page 2 of the Office Action dated February 12, 2003 (second paragraph of claim 2 discussion) with reference to col. 19, lines 23-31 of Bealkowski et al..

Indeed, one of the benefits of the present invention is the capability to update firmware of one disk device to the firmware of another disk device which may have an updated version of the firmware, without the need to utilize an external source therefor. In the arrangement shown in Figure 1B of Bealkowski et al., the firmware of the computers 102, 102B are updated using the external source described at col. 19, lines 23-31 of Bealkowski et al.. Bealkowski et al. does not suggest that firmware is transferred *internally* among the computers of the system whereby, for example, firmware of one computer 102 is transferred to another computer 102B. Instead, all computers 102, 102B receive new firmware from the common external update program rather than from each other.

As anticipation under 35 U.S.C. § 102 requires that each and every element of the claim be disclosed in a single prior art reference, *Akzo N.V. v. U.S. Int'l Trade Commission*, 808 F.2d 1471 (Fed. Cir. 1986), based on the foregoing, it is submitted that Bealkowski et al. does not anticipate claim 1, nor any claim dependent thereon.

B.   CLAIM 2

The rejection of claim 2 is traversed for reasons similar to those discussed above with respect to claim 1. The Examiner alleges that "[c]ol. 19, lines 23-31 describe the steps of starting an updating program, then transmitting and storing the firmware in both the first and second memories." The relevance of this allegation to claim 2 is not understood.

Claim 2 recites in pertinent part, "a storing step of storing firmware of one of *said disk devices* into a *second memory* ... and; an updating step of transmitting the firmware stored in *said second memory* to a disk device to be updated ... " (emphasis

added). In contrast, as asserted by the Examiner, Bealkowski et al. merely discloses updating both memories (main and back-up) of the disk devices from a common external update program having the new firmware. Bealkowski et al. does not suggest temporarily storing firmware of one of the alleged disk devices 102, 102B in a memory (e.g., by copying) so as to transmit that particular firmware to another disk device. As previously mentioned, Bealkowski et al. updates the firmware of the disk devices using the external update program rather than existing firmware of the various disk devices.

As anticipation under 35 U.S.C. § 102 requires that each and every element of the claim be disclosed in a single prior art reference, *Akzo N.V. v. U.S. Int'l Trade Commission*, 808 F.2d 1471 (Fed. Cir. 1986), based on the foregoing, it is submitted that Bealkowski et al. does not anticipate claim 2, nor any claim dependent thereon.

C. CLAIM 8

With respect to claim 8, the Examiner alleges that "[o]ne of the two memory banks (col. 17, lines 48-49) can read as the second memory." However, *both* memory banks of each of the alleged disk devices store only firmware for its own disk device rather than "for *selectively* storing a *selected* firmware of one of *said plurality of disk devices*." As shown in Figure 1 of Applicant's drawings, one exemplary embodiment of the second memory 3 can store firmware from any one of the disk devices 22-26 stored in first memories 32-36, respectively, so as to enable subsequent transfer to another one of the disk devices. In contrast, the memory banks of Bealkowski et al. do not *selectively* store firmware from among the plural disk devices, but store only the firmware attributed to its own disk device. The second memory provides one possible means by which to enable temporary storage of firmware of one disk device (e.g., by copy) before being transferred to another disk device.

As anticipation under 35 U.S.C. § 102 requires that each and every element of the claim be disclosed in a single prior art reference, *Akzo N.V. v. U.S. Int'l Trade Commission*, 808 F.2d 1471 (Fed. Cir. 1986), based on the foregoing, it is submitted that Bealkowski et al. does not anticipate claim 8, nor any claim dependent thereon.

D.   DEPENDENT CLAIMS

Under Federal Circuit guidelines, a dependent claim is nonobvious if the independent claim upon which it depends is allowable because all the limitations of the independent claim are contained in the dependent claims, *Hartness International Inc. v. Simplimatic Engineering Co.*, 819F.2d at 1100, 1108 (Fed. Cir. 1987). Accordingly, as claims 1, 2 and 8 are patentable for the reasons set forth above, it is respectfully submitted that all claims dependent thereon are also patentable. In addition, it is respectfully submitted that the dependent claims are patentable based on their own merits by adding novel and non-obvious features to the combination.

For example, with respect to claim 10, the Examiner alleges that "[c]ol. 18, lines 49-56 describe a version code ... of one memory bank [that] is compared to the version code of another memory bank ... ." However, Bealkowski et al. does not disclose comparing a parameter between the respective *disk devices 102,102B*. Instead, Bealkowski et al. expressly discloses that version codes of memory bank and back-up 502, 504 *within a single alleged disk device* are compared, so that firmware among the different alleged disk devices 102, 102B are not compared to each other.

Based on all the foregoing, it is respectfully submitted that claims 1-13 are patentable over Bealkowski et al.. Accordingly, it is respectfully requested that the rejection of claims 1-7 under 35 U.S.C. § 102 be withdrawn.
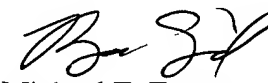
CONCLUSION

Having fully responded to all matters raised in the Office Action, Applicant submits that all claims are in condition for allowance, an indication for which is respectfully solicited. If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, the Examiner is requested to call Applicant's attorney at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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